



**ALJ CODE OF CONDUCT RESPONSE (DRAFT)****1. Responder Identification Information****2. How do the provisions of the Code of Judicial Conduct [except for the following provisions: Cannon 2.1, 2.8(C), Cannon 3.2, 3.4, 3.9, 3.10, 3.15(B), 3.15(C), and Cannon 4] conflict with or compliment your ALJ's statutory/administrative mandates?**

Response: (In offering this response it is understood that the reference to Cannon 2.1 in the question should actually be a reference to 2.17.) The Canons of the Code of Judicial Conduct (*CJC*) that are made applicable to the ALJ's of the Natural Resources Commission (*NRC*) correlate with one or more sections of the Administrative Orders and Procedures Act (*AOPA*) in many if not all instances. In a broad sense it is observed that the CJC imposes both obligations and restrictions or prohibitions upon judges in order to insure all individuals have access to a fair and impartial tribunal. For this same purpose AOPA requires an ALJ to provide for all parties' participation (I.C. 4-21.5-3-15 & I.C. 4-21.5-3-17), addresses disqualification of ALJs as set forth in I.C. 4-21.5-3-10, I.C. 4-21.5-3-12 & I.C. 4-21.5-3-13, and imposes prohibitions against and disclosure requirements associated with ex parte communications at I.C. 4-21.5-3-11. Other sections of AOPA correspond to the applicable Canons of the CJC as well but an exhaustive cross reference does not appear appropriate at this juncture.

In light of the fact that P.L. 72-2014 requires all future hired ALJs to be attorneys it seems appropriate to this evaluation to also consider the Indiana Rules of Professional Conduct (*IPC*). Again there are many instances of similarity between the RPC and the CJC but two principal areas seem noteworthy. Both the RPC and the CJC impose similar requirements and obligations associated with staff supervision and with respect to addressing attorney/judge misconduct or fitness. In that respect it is noted that the NRC ALJs are already required to be attorneys admitted to practice law.

The applicable Canons of the CJC referenced in this question were made applicable to the NRC's ALJs through the adoption of 312 IAC 3-1-2.5 in 2007. There has never been an instance in which the CJC conflicted with any statutory or administrative mandate.

**3. What would be appropriate methods of enforcement for the ALJ Code of Conduct?**

The response provided here assumes that the reference to "enforcement" pertains to disciplinary action necessary to address an individual ALJ's violation of the statewide code. At Section 2 of P.L. 72-2014 it is stated that "the statewide code of judicial conduct for administrative law judges shall be enforced under IC 4-21.5." With the caveat that the NRC does not possess expertise in the subject matter of government employee disciplinary matters, it is observed that I.C. 4-15-22 establishes the State Personnel Department and places within that Department's authority matters relating to employment, including the demotion, suspension or dismissal of an employee or other action associated with employee discipline. An employee is expressly allowed to seek administrative review under I.C. 4-21.5 of certain action associated with his/her

employment to the State Employee Appeal Commission. For this reason, a person might conclude that an adequate “enforcement” mechanism currently exists.

Additional content of P.L. 72-2014 expressly provides that the “inspector general is not responsible for enforcing the statewide code of judicial conduct for administrative law judges or for investigating a possible violation of the statewide code” but remains silent with respect to the actual creation of any enforcement mechanism. It might be necessary to consider whether the creation of any enforcement mechanism beyond those means already existing could be considered beyond the authority granted by P.L. 72-2014.

**4. Please describe any challenges you anticipate experiencing in implementing the ALJ Code of Judicial Conduct in your organization?**

The NRC implemented the ALJ Code of Judicial Conduct pursuant to 312 IAC 3-1-2.5 in 2007. There was and has never been any challenge associated with that implementation.

**5. Please include any additional information/comments/suggestions that you believe may be helpful in drafting the ALJ Code of Judicial Conduct?**

The answers provided here have been drafted by the ALJs of the NRC Division of Hearings without consultation with the NRC’s Objections Committee (also referred to as the “*AOPA Committee*”), which was established at 312 IAC 3-1-12(d) “for the review of objections, and to consider any other appropriate relief under IC 4-21.5-3-28 through IC 4-21.5-3-31” following the issuance of an ALJ nonfinal order. It is anticipated that the AOPA Committee will next meet between mid-July and mid-August and the ALJs would expect to provide the members an opportunity to consider these responses and to offer additional insights and perspectives. We would respectfully request an opportunity to update our responses to include that additional input.